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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/769,667	01/30/2004	Allen D. Siblik		8552

7590 08/04/2005
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EXAMINER

PECHHOLD, ALEXANDRA K

ART UNIT	PAPER NUMBER
3671	

DATE MAILED: 08/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/769,667

Applicant(s)

SIBLIK, ALLEN D.

Examiner

Alexandra K. Pechhold

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3 and 6-18 is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1, 2, and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Attwood (US 3,617, 076).**

Regarding claim 1, Attwood discloses an articulated reflector comprising:

- a base, seen as barrier (14) in Figs. 1 and 2, including means for retaining the base on standard guardrail mounting bolts, disclosed by Attwood in column 2, lines 21-23 in that the barrier (14) is in turn supported by being fastened to posts by suitable means such as bolts,
- a reflector mounting member, seen as tab (17) or tab (19), including means for mounting reflective mea thereon, disclosed by Attwood in column 1, lines 49-53 in that the surfaces of the tabs can be coated with a material for reflecting light, and
- resilient L-shape spring steel member, seen as fastening device (10) (Col 2, lines 30-32 disclose that device (10) is made from spring steel), defining substantially identical mounting portions oriented about 90 degrees from each other and joined by a bight portion therebetween, seen in Figs. 1 and

2 as the somewhat horizontal portion of device (10) and the vertical portion of device (10).

Regarding claim 2, the barrier (14) is selectably releasably mounted to the device (10), since they can be separated or adjusted by bolts (56).

Regarding claim 4, the barrier (14) is disclosed as being made of metal, like the tabs (17, 19) of the fastening device (1).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Attwood (US 3,617, 076).** Attwood fails to disclose the base and reflector mounting member being made of plastic, instead disclosing them as made of metal. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the material of the base and reflector mounting member of Attwood to be plastic, since plastic is commonly used, economical, strong, and durable, and furthermore it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Allowable Subject Matter

5. Claims 3 and 6-18 are allowed.

Response to Arguments

6. Applicant's arguments filed 6/6/05 have been fully considered but they are not persuasive.

The applicant argues that the Examiner cannot view the guardrail (14) of Atwood as the recited "base" in claim 1, since the preamble to claim 1 recites "An articulated reflector for use on lane dividers and guardrails and the like comprising...". The Examiner is maintaining the rejection, on the basis that the preamble merely recites an intended use. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). The applicant is not claiming the combination of a reflector and a guardrail or divider; the reflector need only be capable of being used on some sort of divider or guardrail or the like. Therefore, since this limitation is not being positively recited in the preamble, the Examiner can equate the claimed "base" with Atwood's guardrail (14).

Applicant also disagrees that part of the fastening device (10) of Atwood can be equated with the recited L-shaped spring steel member. The Examiner is maintaining the rejection on the basis that Atwood discloses the recited structure in the fastening

Art Unit: 3671

device (10). The fact that Atwood's structure is more complicated and has additional structure is being the scope of the claim. The applicant also argues that the fastening device (10) of Atwood is somehow not "resilient" like the applicant's L-shaped reflector. The Examiner disagrees with this reasoning. Merriam Webster's online dictionary defines "resilient" as "characterized or marked by resilience : as a : capable of withstanding shock without permanent deformation or rupture **b** : tending to recover from or adjust easily to misfortune or change." Atwood discloses in column 2, lines 30-33 that the fastening device (10) is made of gauge strip material that preferably has spring-like characteristics. Certainly something with spring-like characteristics is capable of withstanding some amount of shock and meets the definition.

Conclusion

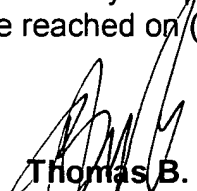
7. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Art Unit: 3671

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexandra Pechhold whose telephone number is (571) 272-6994. The examiner can normally be reached on Mon-Thurs. from 8:00am to 5:30pm and alternating Fridays from 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (571) 272-6998. The fax phone number for this Group is (703) 872-9306.



Thomas B. Will
Supervisory Patent Examiner
Group 3600

AKP
7/25/05